

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6955**

**BILL NUMBER:** HB 1283

**NOTE PREPARED:** Dec 30, 2008

**BILL AMENDED:**

**SUBJECT:** Ephedrine and Pseudoephedrine.

**FIRST AUTHOR:** Rep. Van Haaften

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☐ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** The bill makes ephedrine and pseudoephedrine Schedule V controlled substances.

It repeals provisions concerning the establishment and operation of an electronic log to record the sale without a prescription of drugs containing ephedrine and pseudoephedrine.

**Effective Date:** July 1, 2009.

**Explanation of State Expenditures:** *Summary-* Costs for the incarceration of offenders convicted of Schedule V controlled substance offenses could increase if more people are incarcerated as a result of adding to the list of Schedule V controlled substances. Also, costs of incarceration could increase because racketeering influence and corrupt organization statutes apply to dealing controlled substance offenses and, depending on the circumstances of a controlled substance offense, portions of a sentence may not be suspended. Felony murder charges apply when a person kills another person while dealing a Schedule V controlled substance. Although not expected to have a fiscal impact on state agencies, adding to the controlled substance schedule may increase the number of driving license suspensions and professional license revocations (depending on the actions of the court and the professional licensing boards or state agencies involved).

On the other hand, revenues may increase because illegal controlled substances are subject to excise taxes, criminal offense penalties may include fines, and vehicles or other property involved in controlled substance offenses may be forfeited. Also, funds available for the Indiana State Police (ISP) to create an electronic log to record sales of drugs containing ephedrine and pseudoephedrine could be redirected to other projects.

Background and Additional Information -

*Criminal Offenses* - Offenses concerning Schedule V controlled substances include:

- Dealing in a Schedule V controlled substance (IC 35-48-4-4)
- Corrupt business influence (IC 35-45-6-1)
- Distributing or dispensing a controlled substance (IC 35-48-4-14)
- Murder (IC 35-42-1-1)

The penalties for these crimes range from felony murder to a Class D felony, and, depending on the circumstances of the crime, these offenses include enhanced penalties. The following penalties apply to these offenses.

Crime Class Category	Sentence Range	Average Length of Stay in a DOC Facility
Felony Murder	45 to 65 years; Death Penalty; or Life Imprisonment without Parole	19, 16, or 47.5 years*
Class C Felony	2 to 8 years	2 years
Class D Felony	6 months to 3 years, or Reduction to Class A misdemeanor	10 months
*The average length of stay for a determinate-term penalty is based on 2007 releases to parole and for the death penalty is based on 15 offenders sentenced to death who appealed execution and were executed. For life imprisonment without parole, the average length of stay is estimated.		

The average expenditure to house an adult offender was \$20,287 in FY 2008. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

*Murder Cases* - The state reimburses 50% of qualified expenses incurred in counties holding death penalty cases. In murder cases where the most serious penalty is either life without parole or a term of years in prison, the state Public Defense Fund reimburses 40% of the qualified expenses of the trial. For murder cases in which the death penalty is being requested, attorney costs are estimated at \$107,804. For murder cases where life without parole is being requested, attorney costs are estimated at \$27,370. A term of years in prison would be even less expensive, but the exact attorney costs are not known.

*Vehicle or Property Seizure* - To the extent that the court would notify the Bureau of Motor Vehicles (BMV) and the BMV produces a clear title, costs for the BMV could increase minimally.

*Electronic Log* - The ISP is in the process of establishing an electronic log to record the sales of drugs containing ephedrine or pseudoephedrine. The funds to establish the log are from handgun licenses fees. These fees are placed in the state General Fund, but fees in excess of \$1.1 M are available to the ISP to operate and maintain the central repository for criminal history, and to establish, operate and maintain an electronic log. In FY 2008, the total handgun license fee revenues were \$4.0 M, and the portion available to the ISP was approximately \$2.9 M.

**Explanation of State Revenues:** *Criminal Offenses* - If additional court cases occur and fines are collected,

revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for all felony offenses is \$10,000, and for a Class C misdemeanor is \$500. Criminal fines are deposited in the Common School Fund.

For a misdemeanor in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

*Excise Taxes* - Illegal Schedule V controlled substances are subject to a \$10 per gram or other unit excise tax. Between FY 2004 and 2008, the average annual revenue from all schedule controlled substances excise taxes was \$167,171.

*Vehicle or Property Seizure* - The proceeds from the sale of a seized vehicle are distributed first to the county sheriff to cover sale costs, then to any person holding a valid lien or having an interest in the property, and then to the Common School Fund as ordered by the court.

**Explanation of Local Expenditures:** *Criminal Offenses* - If more defendants are detained in county jails prior to their court hearings or incarcerated in a county jail for a misdemeanor offense, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

*Murder Cases* - The total costs of a murder trial where the death penalty is sought is estimated at \$219,346, and for life without parole it is estimated to cost \$50,314. These estimates include attorney, jury, prosecutor, and law enforcement costs. The cost of trial for a penalty with a term of years in prison is not known.

*Vehicle or Property Seizure* - The prosecuting attorney may bring an action to seize a vehicle and may retain an attorney who is not a deputy prosecuting attorney.

**Explanation of Local Revenues:** *Criminal Offenses* - If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

*Vehicle or Property Seizure* - A county sheriff may retain proceeds from the sale of a seized vehicle to offset costs associated with its sale.

**State Agencies Affected:** DOC.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** DOC; Todd Smith, ISP, 317-232-8998; Doug Gosser, Indiana Sheriffs' Association, 317-356-3633.

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